

RECEIPT NUMBER
200530787

8.

UNITED STATES OF AMERICA

IN THE DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

ANDREA McGOFF,

Plaintiff,

-v-

U.A.G. MICHIGAN PONTIAC-GMC,
L.L.C., doing business as RINKE
PONTIAC-G.M.C., and TIMOTHY
BIELACZYC, Jointly & Severally,

Defendants.

JUDGE : Steeh, George Caram
DECK : S. Division Civil Deck
DATE : 09/01/2005 @ 15:10:58
CASE NUMBER : 2:05CV73396
CMP ANDREA MCGOFF VS UAG MICH
PONTIAC ET AL (LE) SI

JOEY S. NISKAR (P55480)
Attorney for Plaintiff
29201 Telegraph Rd., Ste. 330
Southfield, MI 48034
(248) 415-0356

MAGISTRATE JUDGE R. STEVEN WHALEN

Complaint and Demand for Jury Trial

NOW COMES the plaintiff, Andrea McGoff, by and through her attorneys, Erlich, Rosen & Bartnick, P.C., and in support of her complaint against the defendants, hereby states as follows:

A. Statement of Jurisdiction

1. The plaintiff is a resident of the City of Roseville, County of Macomb, State of Michigan.
2. U.A.G. Michigan Pontiac-G.M.C., LLC, (hereafter "UAG"), is a Delaware Limited Liability Corporation located in, and conducting business in the City of Warren, County of Macomb, State of Michigan. UAG was, at all pertinent times, doing business as Rinke Pontiac-G.M.C.
3. The defendant, Timothy Bielaczyc, works in, and thus regularly conducts business in the

County of Macomb, State of Michigan.

4. As each of the defendants reside in and/or regularly conduct business in the County of Macomb, State of Michigan, this Honorable Court possesses personal jurisdiction over the defendants, and venue is proper pursuant to 28 USC § 1391.
5. Plaintiff alleges violations of the Family and Medical Leave Act of 1993, 29 USC § 2601, *et seq* (hereafter "FMLA"). Therefore, this Honorable Court possesses subject matter jurisdiction pursuant to 28 USC § 1331 and 29 USC § 2617(a)(2).

B. Factual Allegations

Plaintiff incorporates all prior averments, as if fully set forth herein.

6. The plaintiff began her employment with defendant, UAG on or before August 1, 2003. At the time of her termination, plaintiff was employed as a customer service representative.
7. Defendant, UAG, employed more than 50 employees within a 75 mile radius of the location of plaintiff's work site, for the requisite amount of time set forth in 29 USC § 2611.
8. Plaintiff worked more than 1250 hours for UAG in the 12 months prior to the last day she actually worked at UAG.
9. The plaintiff was eligible for leave under the FMLA prior to the date upon which she commenced her medical leave.
10. On August 2, 2004, the plaintiff was hospitalized following a suicide attempt. She was admitted to a hospital for several days and provided both medical and psychiatric treatment for severe depression. The plaintiff's employer was promptly notified of plaintiff's hospitalization.
11. The plaintiff's physician cleared her to return to work without any restrictions on August 16, 2004.
12. The plaintiff attempted to return to work on August 16, 2004, but was terminated from

her employment by defendant, Timothy Bielaczyc, due to her absence from work from August 2, 2004 to August 16, 2004.

13. Defendant, Timothy Bielaczyc, was an individual possessing the authority to terminate plaintiff's employment.
14. The termination was authorized and/or approved by defendant, Timothy Bielaczyc.

C. Count I – Violation of the Family and Medical Leave Act, 29 USC § 2601, et seq.

Plaintiff incorporates all prior averments, as if fully set forth herein.

15. Plaintiff qualified as an eligible employee under the FMLA.
16. The defendant, UAG, qualified as an employer under the FMLA.
17. The plaintiff was qualified for FMLA leave under 29 USC § 2611 and 29 USC § 2612.
18. The medical condition which resulted in the plaintiff's absence from work was a "serious health condition" within the meaning of 29 USC § 2612 and 29 CFR § 825.114.
19. The plaintiff provided the defendant, UAG, with adequate, timely and sufficient notice, under the circumstances, of her need for leave.
20. Prior to terminating the plaintiff, the defendants did not make any inquiry to determine if the plaintiff's absence was subject to the plaintiff's rights and protections afforded under the FMLA and/or the regulations promulgated thereunder. Furthermore, the defendants improperly and/or fraudulently attempted to back-date the date of termination to a date that they believed was prior to the date upon which plaintiff would have become eligible for leave under the FMLA.
21. Prior to terminating the plaintiff, the defendants did not submit any written request to the plaintiff to provide medical certification to support the need for FMLA leave.
22. Prior to terminating the plaintiff, the defendants did not make any oral request to the plaintiff to provide medical certification to support the need for FMLA leave.
23. Notwithstanding the above, the defendants engaged in conduct prohibited under the FMLA, and the regulations promulgated thereunder, including but not limited to:

- a. Improperly denying the plaintiff leave under the FMLA;
- b. Improperly terminating the plaintiff in violation of the FMLA;
- c. Improperly failing to adequately and sufficiently post, publish and otherwise notify the plaintiff of her rights under the FMLA in a timely manner;
- d. Improperly failing to timely grant or deny leave under the FMLA, thereby deeming the plaintiff eligible for full rights under the FMLA;
- e. Improperly failing to timely restore the plaintiff to her prior job position, or an equivalent position following her FMLA leave;
- f. Improperly failing to maintain the plaintiff's employment benefits during the time period plaintiff was entitled to FMLA leave;
- g. Improperly failing to timely, adequately and appropriately investigate and inquire into the plaintiff's eligibility for FMLA leave and designate the same as FMLA leave;
- h. Improperly failing to timely, adequately and appropriately comply with the regulations promulgated under the FMLA;
- i. Improperly interfering with the plaintiff's rights under the FMLA;
- j. Improperly retaliating against the plaintiff for exercising and/or attempting to exercise her rights and protections afforded by the FMLA; and
- k. Wilfully, intentionally, and purposely violating the plaintiff's rights under the FMLA, and otherwise engaging in bad faith violations of the FMLA, as well as violating the requirements of the FMLA without reasonable grounds.

24. As a direct and proximate result of the defendants' violations of the FMLA and the regulations promulgated thereunder, the plaintiff has incurred all damages available at law, both in the past and into the future, specifically including all damages set forth in 29 USC § 2617, including but not limited to lost wages, lost salary, loss of employment benefits, loss of other compensation denied and lost, the cost of care, interest, costs of litigation, attorney fees and liquidated damages equal to the sum set forth in 29 USC § 2617. Plaintiff hereby seeks recovery of all such damages incurred, and those that will be incurred in the future.
25. Defendant, Timothy Bielaczyc, is being held liable in his individual capacity pursuant to 29 USC § 2611 and 29 CFR § 825.104(d).

WHEREFORE the plaintiff respectfully prays for judgment against the defendants, jointly and severally, for all compensatory damages, punitive damages, liquidated damages, exemplary damages, and economic damages available at law, together with costs, interest and attorney fees incurred in having to investigate, pursue, litigate and prosecute the instant action.

Respectfully submitted,

ERLICH, ROSEN & BARTNICK, P.C.

By: 

JOEY S. NISKAR (P55480)

Attorney for Plaintiff

29201 Telegraph Rd., Ste. 330

Southfield, MI 48034

(248) 415-0356

Dated: September 1, 2005

UNITED STATES OF AMERICA
IN THE DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

ANDREA McGOFF,

Plaintiff,

-v-

U.A.G. MICHIGAN PONTIAC-GMC,
L.L.C., doing business as RINKE
PONTIAC-G.M.C., and TIMOTHY
BIELACZYK, Jointly & Severally,
Defendants.

JOEY S. NISKAR (P55480)
Attorney for Plaintiff
29201 Telegraph Rd., Ste. 330
Southfield, MI 48034
(248) 415-0356

05-73396

Case No.

Hon.
GEORGE CARAM STEEH

MAGISTRATE JUDGE R. STEVEN WHALEN

U.S. DIST. COURT CLERK
EAST DIST. MICH.
DETROIT-PSG

05 SEP -1 P 3:22

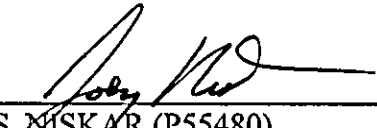
FILED

Demand for Jury Trial

The plaintiff, Andrea McGoff, by and through her attorneys, Erlich, Rosen & Bartnick, P.C., hereby demands a trial by jury on all issues in the instant action.

Respectfully submitted,

ERLICH, ROSEN & BARTNICK, P.C.

By: 
JOEY S. NISKAR (P55480)
Attorney for Plaintiff
29201 Telegraph Rd., Ste. 330
Southfield, MI 48034
(248) 415-0356

Dated: September 1, 2005

05-73396

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: Macomb

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

Andrea McGoff

DEFENDANTS**GEORGE CARAM STEEH**

UAG Michigan Pontiac-GMC, LLC, d/b/a
Rinke Pontiac-GMC, and Timothy Bielaczyc,
Jointly & Severally

(b) County of Residence of First Listed

Macomb

County of Residence of First Listed

Macomb

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Joey Niskar, Erlich, Rosen & Bartnick, P.C., 29201
Telegraph Rd., Ste. 330, Southfield, MI 48034
(748) 415-0356

Attorneys (If Known)

Possibly: Thomas Paxton, 1000 Woodbridge St.
Detroit, MI 48207-3192
MAGISTRATE JUDGE R. STEVEN WHALEN

11. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item 11)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|----------------------------|---|----------------------------|
| PLA | DEF | PLA | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | | Incorporated or Principal Place of Business in This State | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen of Another | | Incorporated and Principal Place of Business in Another State | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | | Foreign Nation | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Com mod ties/Exchange <input type="checkbox"/> 875 Customer Challenge 12 LISC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 (specify) _____
- ☐ 6 Multi district Litigation
- ☐ 7 Judge from District
- Transferred from another district
- Appeal to District

V1. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Family & Medical Leave Act, 29 U.S.C. Sec. 2601, et seq.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

 \$ DEMAND
 Unspecified

 CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No
VIII. RELATED CASE(S) instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

9-1-05

Joey Niskar (P55496)

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
